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Supreme Court, U.S.
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No. 08-864

In the
SUPREME COURT OF THE UNITED STATES

October Term, 2008

Duarte Manuel Cabral, *Petitioner*,

vs.

The United States, *Respondent*.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Federal Circuit

PETITION FOR A WRIT OF CERTIORARI

DUARTE MANUEL CABRAL
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Petitioner in Propria Persona

QUESTIONS PRESENTED FOR REVIEW

On December 13, 2007, a verified complaint was filed against the United States by the petitioner, *pro se*, in the Court of Federal Claims naming three actionable causes correlating to basic rights founded upon the Constitution (describing amends recoverable from the government but not inclusive of detriment classified as sounding in tort) in accordance with established entry procedure allocated to the court under 28 U.S. Code § 1491(a) jurisdiction protocol.

One month later, following case assignment and before expiration of the 60–day time frame allotted to the United States (sole defendant) to file a response the trial court, by way of ex–parte initiative and without detail as to how originating paperwork was circulated absent summons by either party to explain court reasoning to act, dismissed the action (*sua sponte*) citing an unprecedented right to prescreen along with discretion to reinterpret jurisdiction material, which the court of appeals affirmed on October 08, 2008, citing the procedure as correct under given circumstance. Questions presented:

1. Whether the opinion of the Court of Appeal for the Federal Circuit which affirms the Court of Federal Claims Ex–Parte *sua sponte* application utilized to dismiss a complaint absent joint–party participation is correct given the lack of legislation or precedent ruling to support the act under current circumstance.

2. Whether the decision of the Court of Appeals for the Federal Circuit to affirm the trial court's *sua sponte* assertion and right to reinterpret originating material to reflect jurisdiction and material content different from initially stated is correct; and if so how this action differs from 28 U.S. Code § 454 provisions prohibiting a judge from practicing law.

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In the
SUPREME COURT OF THE UNITED STATES

October Term, 2008

Duarte Manuel Cabral, *Petitioner,*

vs.

The United States, *Respondent.*

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Federal Circuit

The petitioner, Duarte Cabral, respectfully prays for a writ of certiorari to review the opinion and judgment of the United States Court of Appeals for the Federal Circuit employed to affirm the United States Court of Federal Claims asserted right to dismiss a complaint *sua sponte* following judicial contrived pleading reinterpretation **and** before case circulation or defendant response as stated by opinion rendered in the court below.

OPINIONS BELOW

The opinions of the court of appeals (App., *infra*, 1a – 4a) and of the court of federal claims (App., *infra*, 6a – 12a) are both unreported.

JURISDICTION

The court of appeals entered its final order with opinion to dismiss the appeal on October 8, 2008 (App., *infra*, 1a – 4a). An entry of judgment accompanying this order was entered on October 8, 2008, with mandate issued on December 01, 2008 (App., *infra*, 5a).

The court of federal claims following a self assigned ex–parte proceeding entered a *sua sponte* disposition order and judgment to dismiss the complaint on January 15, 2008 (App., *infra*, 6a – 13a). In accordance with R.C.F.C., rule 58.1 and Federal Rules of Appellate Procedure, rule 3 a timely notice of appeal was filed on February 20, 2008 to review case disposition by way of appeal.

The jurisdiction of this Court to review the matter is timely invoked pursuant to Title 28 U.S. Code § 1254 (1).

STATUTORY PROVISIONS INVOLVED

Title 28 U.S. Code § 1491 (a) (1) provides jurisdiction to the Court of Federal Claims to review a claim against the government founded **upon** the Constitution, in relevant part, reciting, "The United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort."

Title 28 U.S. Code § 1491 (a) (2) follows with authority and instruction set forth to the court, in relevant part, "To provide an entire remedy and to complete the relief afforded by the judgment, the court may, as an incident of and collateral to any such judgment, issue orders... and such orders may be issued to any appropriate official of the United States. In any case within its jurisdiction, the court shall have the power to remand appropriate matters to any ... official with such direction as it may deem proper and just."

Title 28 of U.S. Code § 454 recites limitations placed on a judge with regards to practicing law, in relevant part, commanding "Any justice or judge appointed under the authority of the United States who engages in the practice of law is guilty of a high misdemeanor.

Rule 7(a) of Rules of the United States Court of Federal Claims dictates, in relevant part, "There shall be a complaint and an answer; if the answer contains a counterclaim or offset or a plea of fraud, there shall be a reply thereto..... There shall be no other pleading allowed."

Rule 12 of Rules of the United States Court of Federal Claims prescribes, in relevant part, "The United States shall file its answer to the complaint within 60 days after service of the pleading in which the claim is asserted." 12(c) of this same rule applies to a court's authority to act accordingly cites, in relevant part, "After the pleadings are closed, but within such time as to not delay a trial any party may move for judgment on the pleadings."

STATEMENT OF CASE

On December 13, 2007, the petitioner, Duarte Manuel Cabral, *pro se*, filed a complaint against the United States government in the United States Court of Federal Claims alleging non-tort induced U.S. Constitution related damages and seeking reparation with request for declaratory judgment pursuant to Title 28 U.S. Code §§ 1491 (a) and 2201 jurisdiction mandates citing detriment sustained from a 2005 government proceeding **not** arising **under** the Constitution, laws, or treaties of the United States (but rather a claim based **upon** the foundation of the document itself) staying consistent with the all-

inclusive dictates written in support of the Constitution to the United States of America (App., *infra*, 14a – 29a).

On January 15, 2008, following the United States notice of appearance **and** before expiration of the 60–day time period allotted to the defendant to file a response, the originating complaint was circulated with the history and jurisdiction contents modified on court discretion with the case then dismissed (*sua sponte*) by way of unsolicited ex–parte judicial review with the trial court citing authority to reinterpret material in accordance with desired outcome (App., *infra*, 6a – 13a).

On February 19, 2008, the petitioner filed a notice of appeal to review the disposition and handling of the case in the court below; and on October 08, 2008, the decision was panel affirmed with the court of appeals conferring judicial prerogative to screen, prematurely circulate, and modify jurisdiction, if necessary, for reinterpretation as needed per review, to save the defendant summoned from trouble and cost of having to file a response (App., *infra*, 1a – 5a).

A. Events Preceding Privilege to Claim.

On August 10, 2005, trailing a 2–year series of unsuccessful attempts to persuade a superior court to terminate jurisdiction following the court's permanent dislocation of two minors from the United States to Canada, the petitioner filed a petition for removal of a civil action from a state court to the federal forum pursuant to 28 U.S. Code §§ 1441, 1443 (actions removable/civil action for persons denied or unable to enforce rights under state law) due to the sovereignty boundary displacement known by the court to be in direct conflict with California State and federal related bylaws.

Some two months later, on October 19, 2005, following case circulation and circumvention of the lawyer admission process and with full knowledge of the Canadian court's then fully implemented jurisdiction over parties and irrelevant California controlling bylaws the petition for removal was denied by the district court citing 28 U.S. Code § 1447(d) discretionary ruling/not appealable protocol (where it remains inactive but in full force until addressed and reclassified); with the federal judge classifying foreign sovereignty/separate nation boarders crossing as "domestic" in nature with the request for removal declined (App., *infra*, 35a).

B. Proceedings in the Courts Below.

Rather than address the complaint's verbiage reciting three causes naming fundamental rights founded upon the Constitution, entry of stated court jurisdiction utilized by 28 U.S. Code § 1491(a), or the accompanying secondary money–mandating relief allocated to the petitioner under statute (as claim specified) had the 2005 petition for removal hearing been processed in accordance with regulations and circumstance, the claims court decided to prematurely circulate, censor and rephrase the action while attempting to rewrite history so as to then favor the irreversible wrongdoings inflicted as politically sound whilst conveniently shielding the United States from liability by not having to explain or otherwise respond (App., *infra*, 6a – 12a, 14a - 29a).

While the January 15, 2008, opinion rendered wanders from the historical data referenced citing a number of case instances either irrelevant or altogether inappropriate for the purposes of this review, of notable mention to this action is the

instance of *Arctic Corner, Inc., v. United States*, 845 F.2d 999, 1000 (Fed. Cir. 1988) since this is the case "precedent" cited by the court to foretell of the right to judicial discretion to act *sua sponte* following ex–parte review, while avoiding the subject as to how the paperwork was circulated before joint-party participation was complete (App., *infra*, 8a, 9a).

Similarly, staying consistent with saying as above so in the court below, the court of appeals followed suit with the same historical mention relying on the lower court's revision drafting of material citing an identical history equally inconsistent from the facts plead in the initiating document, and goes on to confer authority to the trial court to "reinterpret Mr. Cabral's claim" while indirectly advocating the right to render legal advice from the bench in addition to condoning ex–parte communication given the fact the defendant had not yet replied, which has long been established to be impermissible in any instance involving the merits such as dismissal of an action signifies (App., *infra*, 2a).

Needless to say, because the court of appeals did not properly address the three broad spectrum questions presented in the petitioner's opening brief (App., *infra* 30a – 47a), reply brief filed in response to the United States (App., *infra*, 48a – 58a) or discuss the material merits of the initial 2007 pleading on file (App., 14a – 29a) (absent reinterpretation) nothing more than the affirmed court of federal claims authority to deviate from traditional procedural to dismiss a case *sua sponte* and by way of ex–parte proceeding is material or ripe for the purposes of this Court's review.

REASONS FOR GRANTING THE PETITION

Even though there are a number of statutes with noted disagreement as to the application applied to the groundwork prompting the 2007 claim none are reviewable, as such, absent review of the trial court's *sua sponte* ex–parte method of case dismissal following affirmed reinterpretation of originating material since this method conflicts with 28 U.S. Code § 454 provisions allocated to a judge and defies foundation set by years of legislation in addition to rewriting authority administered to the courts as created by Article III of the Constitution to the United States.

I. The Right to Ex–Parte Proceeding in Conflict with *Sua Sponte* Precedent Setting Opinion Utilized to Dismiss.

Aside from the authority of a judge to generate an ex–parte summary judgment following defendant failure to timely answer pursuant to summons response, it is well established that a court does not have the authority to initiate or consider ex–parte communications (except in rare or emergency cases) if issues are raised which related to the merits such as this situation demonstrates since the ruling dispenses with an initiating civil complaint.

Moreover, for decades review courts of sorts have been consistent in their decision conveying, "Except in limited circumstances, a court may not communicate ex–parte with a party or its counsel about the merits of a pending lawsuit." *Drobny v. Commissioner of I.R.S.*, 113 F.3d 670, 680 (7th Cir. 1997); *Guenther v. Commissioner of I.R.S.*, 939 F.2d 758, 760-61 (9th Cir. 1991) (trial brief cannot be submitted ex–parte); see also *Clifford v. U.S.*, 136

F.3d 144, 150 (D.C. Cir. 1998) (when party conveys ex–parte information to a judge relating to pending case, courts presume that trial judge can adequately determine whether communication go to merits of case).

In addition to the lack of authority to provide ex –parte review absent joint-party participation, rule 12 of Federal Rules of the United States Court of Federal Claims identifies (Defenses and Objections) "(1) The United States shall file its answer to the complaint within 60 days after service of the pleading in which the claim is asserted." Specifically, because the time frame between the date of filing and time allotted to the United States is substantially under the interval allowed to file the response, the lower court affirmed ruling must be reversed as the technique allowed violates unprecedented procedure in addition to fundamental constitution rights prescribed, and more importantly affects every individual (*pro se* or otherwise) who attempts to access justice in an United States court of law.

II. Title 28 U.S. Code § 454 Limits Judicial Right to Modify or Reinterpret Original Pleading Absent Privilege to Practice.

The complaint recites three actionable causes to a detailed statement of jurisdiction proprietary with background given specific to the 2007 claim, with the action defined from rights founded **upon** the Constitution for detriment induced by the government but not classified as sustained action sounding in tort per the claim (due to the nature of precipitating statutory discretion underlying the 2005 district court ruling involved) with each Cause framed as follows: (1st Cause) Right to Petition the Government for

Redress of Grievances (First Amendment), (2nd Cause) Right to Procedural Due Process of Law (Fifth Amendment) and (3rd Cause) Right to Equal Protection of the Law (Fourteenth Amendment, § 1 (App., *infra*, 16a, 17a, 23a – 26a).

Included and preceding the three causes of action simplistically named by claim, is the request for declaratory judgment attached to a secondary money mandated statute allocated relief accorded by rights combined with Title 28 U.S. Code § 2201 mandates, which the trial court attempted to segregate with the court of appeal without question following the call.

However, aside from the challenge of usage given the way these numerous statutes coincide, of concern is the court of appeals approval of the trial court's asserted right to reinterpretation of a initiating document to modify history and jurisdiction to fit the court's outline, which in essence steps beyond rendering of legal advice, and depicts a perceived authority of a judge to represent a party while playing mediator to the decision influencing the outcome.

More importantly, and because this practice takes advantage, affects countless and places clear prejudice on the party least favored by the court, and admittedly is a common practice routinely used on *pro se* litigants by judges in both state and federal courts alike, the matter must be addressed using Title 28 U.S. Code § 454 criteria (which clearly denounces the practice) as this case situation has identified.

III. The Questions are Important to Clarify Venue and Correct Jurisdiction Review

In an attempt to prevent a tort action based claim founded on the handling and portrayal of this trial

court's understanding of whether this "Not of our jurisdiction" is an appropriate method of disposition identified, the situation provides this Court with the unique opportunity to clarify proper venue and jurisdiction for constitutional type rights not sounding in tort as materially identified, while allowing a case setting precedence to be set for future undertakings due to the random blindfold acceptance of uncertainty being increasing applied.

Accordingly, given the numbers of appeals filed each year and growing due to the acceptance of perceptions frequently misidentified, absent this Court's intervention and direction in this matter it is likely to escalate if the problems mentioned continue to be ignored.

CONCLUSION

For the reasons stated, the petitioner requests the petition for a writ of certiorari to the court below should be granted.

Respectfully submitted,
s/
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Petitioner in Propria Persona

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Appendix A

NOTE: This disposition is nonprecedential.

United States Court of Appeals for the Federal Circuit

2008-5044

DUARTE MANUEL CABRAL,

Plaintiff-Appellant,

v.

UNITED STATES,

Defendant-Appellee.

Appeal from the United States Court of Federal Claims in 07-872C,

Judge Christine C. Miller.

DECIDED: October 8, 2008

Before GAJARSA, DYK and MOORE, Circuit Judges.

PER CURIAM

Duarte Manuel Cabral seeks review of the United States Court of Federal Claims' January 15, 2008 order that sua sponte[1] dismissed his complaint for lack of jurisdiction.

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[1] Mr. Cabral argues that it was improper for the Court of Federal Claims to dismiss his action for lack of jurisdiction sua sponte before the United States investigated the claim's merits and responded. This argument is meritless because the law is well-settled that a trial court has the responsibility to determine its own jurisdiction sua sponte whenever it appears it may be lacking. Arctic Corner, Inc. v. United States, 845 F.2d 999, 1000 (Fed. Cir. 1988).

For the reasons set forth below, the court's order is affirmed.

Mr. Cabral filed a complaint against the United States in the Court of Federal Claims seeking reimbursement of past and future wage garnishments in accordance with a California court order mandating child support. In his complaint, Mr. Cabral relies on the First Amendment and the Due Process Clause of the Fifth Amendment[2] to provide jurisdiction in the Court of Federal Claims. Cabral v. United States, Case No. 07-872C (Ct. Cl. 2008). The Court of Federal Claims concluded that it lacked subject matter jurisdiction over Mr. Cabral's claims because nothing in the First Amendment or the Due Process Clause of the Fifth Amendment explicitly or implicitly obligates the Federal Government to pay money damages.

Mr. Cabral also alleges that 28 U.S.C. § 2201 allocates authority to the Court of Federal Claims to render declaratory relief when no other avenue for remedy is available. The Court of Federal Claims concluded that 28 U.S.C. § 2201 does not provide any basis for jurisdiction and that it lacks jurisdiction to grant declaratory judgments.

This court reviews de novo the Court of Federal Claims' dismissal of Mr. Cabral's complaint for lack of jurisdiction. See Samish Indian Nation v. United States, 419 F.3d 1355, 1363 (Fed. Cir. 2005). In conducting its review, this court assumes that the facts pled by Mr. Cabral are true. See id. At 1364.

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[2] Mr. Cabral's original complaint relies on the Fourteenth Amendment. Because the Fourteenth Amendment does not apply to the Federal Government, the Court of Federal Claims reinterpreted Mr. Cabral's claim as relying upon the Fifth Amendment.

The Court of Federal Claims is a court of limited jurisdiction. See Tucker Act, 28 U.S.C. §1491 (waiving the sovereign immunity of the United States). However, any claim for money damages against the United States must be premised upon an express or implied contract, or under a money-mandating constitutional provision, statute, or regulation. 28 U.S.C. § 1491 (a)(1); Fisher v. United States, 402 F.3d 1167, 1172 (Fed. Cir. 2005) (en banc). Therefore, whether the Court of Federal Claims has jurisdiction over Mr. Cabral's case depends on whether any of the constitutional or statutory provisions on which he relies are money-mandating.

The law is well-settled that the constitutional provisions—the First Amendment and Due Process Clause of the Fifth Amendment—are not money-mandating in these circumstances. See LeBlanc v. United States, 50 F.3d 1025, 1028 (Fed. Cir. 1995); Mullenberg v. United States, 857 F.2d 770, 773 (Fed Cir. 1988); United States v. Connolly, 716 F.2d 882, 886-87 (Fed. Cir. 1983).

The statutes on which Mr. Cabral relies are similarly unavailing. Section 2201 of Title 28, the Federal Declaratory Judgment Act, does not provide any basis for jurisdiction of the Court of Federal Claims. See Rolls-Royce v. United States, 364 F.2d 415, 420 (Ct. Cl. 1966) ("The [Declaratory Judgment] statute is a procedural one and does not supply an independent ground of jurisdiction where none otherwise exists.") On appeal, Mr. Cabral also avers that he is entitled to compensation under the California Family Code § 3653. However, the Court of Federal Claims does not have jurisdiction over claims founded on state law. Souders v. South

Carolina Public Service Authority, 497 F.3d 1303, 1307 (Fed. Cir. 2007). Accordingly, the Court of Federal Claims lacks jurisdiction to hear Mr. Cabral's claims.

CONCLUSION

For the foregoing reasons, we affirm the decision of the Court of Federal Claims.

No costs.

Appendix B

United States Court of Appeals for the Federal Circuit

2008-5044

DUARTE MANUEL CABRAL,

Plaintiff-Appellant,

v.

UNITED STATES,

Defendant-Appellee.

JUDGMENT

ON APPEAL from the United States Court of Federal Claims in CASE NO(S). 07-872C

This CAUSE having been heard and considered, it is ORDERED and ADJUDGED:

AFFIRMED

ENTERED BY ORDER OF THE COURT

DATED: October 08, 2008

s/_____

Jan Horbaly, Clerk

ISSUED AS A MANDATE: December 01, 2008

Appendix C

In the United States Court of Federal Claims

* * * * * * * * * * * * * *

Duarte Manuel Cabral, *pro se,*

Plaintiff,

v. No. 07 – 872C

THE UNITED STATES, (Filed Jan 15,2008)

Defendant.

* * * * * * * * * * * * * *

ORDER

On December 13, 2007, plaintiff filed his complaint in the United States Court of Federal Claims. Plaintiff alleges the San Diego Superior Court, North County Division, San Diego, CA has failed to enforce child visitation rights against his former spouse. He claims that jurisdiction to hear his case is conferred by 28 U.S.C. § 1491(a)(1), (2) (2000), and that a remedy is created by 28 U.S.C. § 2201 (2000). Complaint filed Dec. 13, 2007 ¶¶ 2-3, 6-8.

The complaint recites the following allegations: after twelve years of marriage and the birth of two children, now teenagers, his wife Linda Cabral filed for divorce based on irreconcilable differences; Mrs. Cabral refused plaintiff visitation rights, completely disregarding orders to the contrary. After subjecting the children to therapists and various supposedly

unnecessary medications over a twenty-month period after their separation, Mrs. Cabral relocated the children to Ontario, Canada. During 2003-04 plaintiff filed multiple lawsuits in both California and the Superior Court of Justice, Family Court Division, Newmarket, Ontario, Canada. Despite rulings to the contrary, plaintiff's former wife continually has refused to allow the children to visit and otherwise stay in contact with him, other than an occasional holiday visit. Plaintiff complains specifically about final custody orders and garnishment of wages based on orders for support.

Plaintiff cites to various provisions of Title 28 of the U.S. Code; California State Law, and the Fourteenth Amendment to the U.S. Constitution in an effort to gain access to the Court of Federal Claims.

Pursuant to Rule 8(a)(1) of the Rules of the Court of Federal Claims (RCFC), a plaintiff need only state in the complaint "a short and plain statement of the grounds upon which the court's jurisdiction depends." RCFC 8(a)(1). However, "[d]etermination of jurisdiction starts with the complaint, which must be well–plead in that it must state the necessary elements of the plaintiff's claim, independent of any defense that may be interposed." Holley v. United States, 124F.3d 14621465 (Fed.Cir.1997) (citing Franchise Tax Bd. v. Construction Laborers Vacation Trust, 463 U.S. 1(1983)).

"A court may and should raise the question of its jurisdiction *sua sponte* at any time...." Arctic Corner, Inc. v. United States, 845 F.2d999, 1000 (Fed. Cir. 1988). It has been the practice of the Court of

Federal Claims for a judge to review a *pro se* complaint to ascertain if, beyond a reasonable peradventure, the complaint cannot support jurisdiction. Thus, the Government is not taxed in a case that unquestionably does not belong in the Court of Federal Claims with a wasteful expenditure of its limited resources to establish that jurisdiction is lacking. This Court endorses the prior practice and continues it. In any case exhibiting a jurisdiction deficiency "so attenuated and unsubstantial as to be absolutely devoid of merit, "Knoll v. Finnerty, 242 F.3d 1359, 1362 (Fed. Cir. 2001) (quoting Hagans v. Lavine, 415 U.S. 528, 536-37 (1974)), the court would be remiss in allowing the action to proceed so pointlessly.

The court acknowledges that *pro se* plaintiffs are not expected to frame issues with the precision of a common law pleading. Roche v. USPS, 828 F.2d 1555, 1558 (Fed. Cir. 1987). Therefore, plaintiff's complaint has been reviewed carefully as to ascertain whether, given the most favorable reading, it supports jurisdiction in the Court of Federal Claims.

Under the Tucker Act, 28 U.S.C. § 1491(a)(1) (2000), the court is authorized to "render a judgment upon any claim against the United States founded upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for unliquidated damages not sounding in tort." United States v. Testan, 424 U.S. 392, 398 (1976). In this matter Congress has restricted the authority of the Court of Federal Claims to claims based on statutes or regulations that require the payment of

money, contract express or implied in fact, or claims for property that has been taken in violation of the Fifth Amendment of the Constitution.

In Fisher the United States Court of Appeals for the Federal Circuit sought to clarify Tucker Act jurisdiction, which had blended the questions of the Court of Federal Claims' jurisdiction grant with the merits of the claim. "This mixture has been a source of confusion for litigants and a struggle for courts." Fisher v. United States, 402 F.3d 1167, 1172 (Fed. Cir. 2006) (en banc). As the Federal Circuit elucidated, the Tucker Act does not provide any substantive law that creates the right to money damages." Id.; see also United States v. Mitchell, 463 U.S. 206, 216 (1983).

Although plaintiff relies on the First and Fifth Amendments to provide jurisdiction for his complaint, the law is settled that the Court of Federal Claims cannot hear such actions. */ Nothing in the First Amendment, the Due Process Clause of the Fifth Amendment, or the Equal Protection Clause of the Fifth Amendment explicitly or implicitly obligates the Federal Government to pay damages. See United States v. Connelly, 716 F.2d 882, 886-87 (Fed. Cir. 1983) (en Banc) ("We agree with the Court of Claims that the first amendment, standing alone, cannot be so interpreted to command the payment of money. Like due process clause of the fifth amendment, the literal terms of the first amendment neither explicitly nor implicitly obligate the federal government to pay damages." (internal citations omitted)); see also Crocker v. United States, 125 F.3d 1475, 1476 (Fed. Cir. 1997) ("The Court of Federal Claims correctly concluded that it does not

have jurisdiction to hear [plaintiff's] due process or seizure claims under the Fifth Amendment to the United States Constitution."); Collins v. United States, 67 F.3d 284, 288 (Fed. Cir. 1995) (The Court of Federal claims has no jurisdiction over claim based upon alleged violation by the government of the due process clause: This is so because the due process clause does not obligate the government to pay money damages."); Mullenberg v. United States, 857 F.2d 770, 773 (Fed. Cir. 1988) ("it is firmly settled that [Equal Protection Clause dose] not obligate the United States to pay money damages.").

Although Section 1346(a) cross-reference the jurisdiction of the Court of Federal Claims; it confers jurisdiction only on the Unites States District Courts. Doe v. United States, 372 F.3d 1803, 1312 (Fed. Cir. 2004) (distinguishing the Little Tucker Act, 28 U.S.C. § 1346, from the Tucker Act, 28 U.S.C. 28 U.S.C. § 1491). The Court of Federal Claims does not have jurisdiction over plaintiff's claims under 28 U.S.C. §§ 1331, 1340, 1346(a)(1) (2000), or 26 U.S.C. §§ 6330, 7429 (2000), none of which provide for money damages against the United States based on the specific claims recognized in the Tucker Act.

Plaintiff also bases jurisdiction on Rules 2 and 3 of the Rules of the United States Court of Federal Claims; however, these rules do not discuss

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*/ Although plaintiff's complaint relies on the Fourteenth Amendment, the purpose of the Fourteenth is to apply to the states the protections articulated in the Fifth amendment, see Jenkins v. Anderson, 447, U.S. 231, 235 (1980). As the Fourteenth Amendment has no relevance to a federal court, this court takes it upon itself to reinterpret plaintiff's claim as relying upon the Fifth Amendment, see Ruderer v. United States, 412, F.2d 1285, 1292 (Ct. Cl. 1969).

jurisdiction. Rule 2 states: "There shall be one form Rule 2 states: "There shall be one form of action to be known as a civil 'action.'" This Rule does not create any jurisdiction for the court. The Rule simply eliminates the distinction between actions at law and actions at equity. Next, Rule 3 states "A civil action is commenced by filing a complaint with the court." RCFC 3. This Rule governs procedure for commencing an action in the Court of Federal Claims; it does not create jurisdiction.

The complaint can be read to base jurisdiction on 28 U.S.C. § 2201 (2000), the Federal Declaratory Judgment Act, although plaintiff's allegations discuss the Act in terms of remedy. However, this Act does not provide any basis for jurisdiction of the Court of Federal Claims. Rolls-Royce v. United States, 364 F.2d 415, 420. In Rolls –Royce the Federal Circuit explained that the Act does not extend jurisdiction of the Court of Federal Claims beyond its narrowly defined boarders. Id. (holding that the court "may circumvent [its] lack of jurisdiction by granting [the claimant] the relief sought under the Declaratory Judgment Act"). The Federal Circuit continues to hold that the Court of Federal Claims lacks jurisdiction to grant declaratory judgments. See Gonzales & Gonzales Bonds and Ins. Agency, Inc. v. Dept. Homeland Sec., 490 F.3D 940, 944–46 (Fed. Cir. 2007).

Finally, Plaintiff bases jurisdiction on 28 U.S.C. § 2401 (2000). Because this statute sets forth the statute of limitations governing certain actions, it does not create a basis for jurisdiction.

Plaintiff has framed jurisdiction by amalgamating these and other federal and state

statutes cited in his complaint. None provides a basis for jurisdiction in itself and cannot serve as the springboard for relief based on the cited statutes. The court has scrutinized plaintiff's complaint, which fairly can be stated to have failed to allege any action against the United States that is cognizable by the court. In essence, the Court of Federal Claims does not address matters relating to domestic relations. Accordingly,

IT IS ORDERED, as follows:

The Clerk of the Court shall dismiss the complaint without prejudice for want of subject matter jurisdiction.

s/
Christine Odell Cook Miller
Judge

Appendix D

In the United States Court of Federal Claims

No. 07 – 872 C

Duarte Manuel Cabral,

Plaintiff,

v. (Filed Jan 15, 2008)

THE UNITED STATES,

Defendant.

JUDGMENT

Pursuant to the Court's Order, filed January 15, 2008,

IT IS ORDERED AND ADJUDGED this date, pursuant to Rule 58, that the complaint is dismissed, without prejudice for want of subject matter jurisdiction.

John S. Buckley
Acting Clerk of Court

January 15, 2008

By: s/Debra L. Sander
Deputy Clerk

NOTE: As to appeal, 60 days from this date, see RCFC 58.1, re renumber of copies and listings of all plaintiffs. Filing Fee is 455.00.

Appendix E

In the United States Court of Federal Claims

Case No. 07-872C

Duarte Manuel Cabral,	*	Verified Complaint for
Plaintiff,	*	Declaratory Relief and
	*	Damages Not Sounding
	*	in Tort Pursuant to Title
--v.--	*	28 U.S.C. § 1491(a) and
	*	the First, Fifth and
	*	Fourteenth Amendments
The United States of	*	of the Constitution to the
America,	*	United States of America
Defendant.	*	
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	*	
	*	Duarte Manuel Cabral
	*	P.O. Box 1062
	*	Poway, California 92074
	*	Phone # (858) 945-6941
	*	Fax # (619) 440-5598
	*	
	*	Plaintiff

In the United States Court of Federal Claims

Case No. 07-872C

Duarte Manuel Cabral,	*	Verified Complaint for
Plaintiff,	*	Declaratory Relief and
	*	Damages Not Sounding
	*	in Tort Pursuant to Title
--v.--	*	28 U.S.C. § 1491(a) and
	*	the First, Fifth and
	*	Fourteenth Amendments
The United States of	*	of the Constitution to the
America,	*	United States of America
Defendant.	*	
	*	

Plaintiff, Duarte Manuel Cabral, by way of self representation, respectfully shows and alleges as follows:

INTRODUCTION

1. This is a claim by way of civil action brought by the plaintiff, Duarte Manuel Cabral, against the United States of America for non-tort constitution allocation related damages, compensation and declaratory relief in accordance with Title 28 U.S.C. § 1491 (a) all-inclusive jurisdiction provisional mandates and comes as the direct result of injury sustained from government proceedings **not** arising **under** the Constitution, laws, or treaties of the United States (but rather a claim based **upon** the foundation of the actual document itself) (i.e. damage sustained **cannot** be founded under the guise or pretense of federal question given the situation is not one "recognizable " to an agent or agency alike

acting on behalf of the United States under the given circumstance) staying consistent with state and federal authority dictates written in support of the Constitution to the United States of America.

JURISDICTION

2. Subject matter jurisdiction of this Court to hear, decide and render a judgment in this case naming the United States of America as the sole defendant is predicated upon Title 28 U.S.C. § 1491(a) (1) and (2) (claims against the United States generally), § 1346 (a)(2) (United States as a defendant/cases based upon the constitution non-sounding in tort), § 2401 (time for commencing suit/six-year statute of limitations) and rules 2 and 3 (one form of action/commencement of action) of Rules of the United States Court of Federal Claims; and by express consent conferred by and through the powers created, implied and solely founded **upon** (i.e. distinct and separate from rights protected **under** the Constitution) and as a result of the establishment and implementation thereof (hence thereby a right of express implied contract) of the First and Fifth Amendments to the Constitution of the United States of America.

3. In addition to the aforementioned, Title 28 U.S.C. § 2201 (creation of a remedy), as invoked in the language stated under jurisdiction and authority, allocates declaratory relief and permission by way of statute to this Court reciting "that in a case of actual controversy within its jurisdiction... as determined by administering authority" (i.e. Title 28 U.S.C. § 1491(a) jurisdiction of this Court invoked to hear this claim), "**any court of the United States,** upon the filing of an appropriate pleading, may

declare the rights and other egal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration **shall** have the full force and effect of a final judgment or decree and shall be reviewable as such."

PARTIES

4. That at all times mentioned herein, the plaintiff, Duarte Manuel Cabral, was deemed to be a resident of the United States and residing in the County of San Diego, California and the real party in interest named as defined under rule 17(a) (real party in interest) of Rules of the United States Court of Federal Claims.

5. That at all times herein mentioned, the District Court for the Southern District of California was (and is) a government agency created within the meaning of Article III of the United States Constitution and at all times acting on behalf of the United States of America with discretionary rights reserved by way of statute and not in conflict as such with corresponding federal law, which is why this claim falls under a complaint for damages founded **upon** the Constitution but not classified as an injury sounding in tort due to the nature of allocated discretion to act and subsequent outcome.

BACKGROUND

6. The plaintiff, Duarte Manuel Cabral, was married for 12 years to Linda Cabral and the father of two young children (then ages 7 and 10) and residing in the County of San Diego, California until March 22, 2001, when the then 41-year-old college educated housewife recruited a seasoned attorney and abruptly petitioned for a dissolution of marriage,

alimony and sole custody request citing irreconcilable differences as the sole reason underlying the discontent and overnight change of heart. **(San Diego Superior Court, North County Division Case No.: DN 118749)**

7. Almost immediately, within days of the plaintiff's housing relocation to minimize emotional impact, the wife abruptly severed father-child relations and began disregarding court visitation commands and, within weeks, started introducing the minors' to an array of never before needed therapists, mind-altering prescribed medications and physical assessments accompanied by a soon-there-after restraining order demand; all of which would later prove (some 14 months after-the-fact) to be completely unfounded but nonetheless accepted as justification behind a system induced irreversible father-child alienation cause, later cited to be the reason for displacement of the children from the United States to Canada and from their father's life.

8. On the weekend of July 04, 2003, some 27 months after party separation and expiration of appeal associated with marital asset distributions strongly favoring the then recent–revealed relocation request, the mother was given permission to remove the children from California to the Province of Ontario, Canada almost instantly overnight; and, despite strong objection, the children were immediately displaced from the United States with full knowledge the State of California lacked authority to supervise, modify or enforce custody or visitation privileges as defined under California Family Code § 3402 et al. (i.e. § 3402(o) "State" within the meaning of jurisdiction defined) in spite of orders depicting otherwise, which included the

ability to address (let alone correct) the circumstance even if the plaintiff were to be successful year[s] later by way of "appeal."

9. Three months later, on September 29, 2003, following the mother's refusal to abide with California State ordered contact and visitation following relocation to the Province of Ontario, Canada the plaintiff filed an order to show cause to terminate state jurisdiction in light of sovereignty provisions regulated under the Hague Convention Act, by international treaties and federal law (i.e. Title 28 U.S.C. §§§ 1604, 1738A – 1738C), which the state court denied in spite of all statutory guidelines dictating otherwise. In addition, and only because the activity continues to go unchallenged in light of repressed statutory confusion and current practice conveyed, the court issued an notice of income withholdings order on December 29, 2003 to the plaintiff's then current employer implementing generous child support and lifetime alimony allotment with back pay included in the garnishment command (citing "conditional" international web-based email access to the children as the sole basis backing this entitlement), while sanctioning the plaintiff for challenging the state's foreign boundary invasion that would require an intrusion to get the projected move-away father-child reunification and visitation plan accompanying the garnishment demand enforced.

10. On August 17, 2004, following research the plaintiff again attempted to withdraw state jurisdiction and related orders with another order to show cause motion for lack of jurisdiction and ability to enforce parental rights command citing numerous

state and federal regulations backing the request (i.e. Title 28 U.S.C. §§§ 1604 et al, 1738A, 1738B; California Family Code § 3402 et al.), which this same court on October 20, 2004 again **denied**, in whole, stating that California retained exclusive rights over subject matter and parties concerned but could **not** cite any authority to contradict state law enactments which did not endorse the Court's position or unilateral enforcement of orders/ entitlement to wage-garnishment claim.

11. On November 20, 2004, pursuant to 28 U.S.C. § 1251(b) (3) (original jurisdiction; (3) all actions or proceedings by a state against ... **or** against aliens (i.e. plaintiff was a Canadian citizen at the time of filing) under section 2, clause 2 of Article III) a formal compliance motion for leave to file complaint and complaint ("booklet style" 40-copies) was filed by the plaintiff with the United States Supreme Court to get state jurisdiction terminated and the issue addressed, which the clerk, Cynthia Rapp, immediately returned (twice no less following re-submission) citing **rejection** of the document as a right of court due to subject matter and undesired content being presented.

12. On January 20, 2005, following the plaintiff's return to California after a holiday visit and inquiry with school officials in the Newmarket, Ontario region when attempting to drop off Christmas presents to the children whom the father now had not seen for some four years due to the relocation/alienation aftermath, the plaintiff was informed by family residing in Canada of paperwork served to their home reciting a no-access/sole parental custody with right to dispense with orders and notice of future filings request by Linda Cabral

(against the plaintiff) filed some three weeks back, which the Canadian court had instantly granted with knowledge the father lived roughly 3,000 miles away and was not a threat, and with the understanding he would most likely not have enough time to appropriately respond.

13. On May 05, 2005, following an intense 4-month exchange of pleadings with a provincial court in Ontario in which the plaintiff managed to timely respond, a permanent no access/no contact with the children with termination of residual parental rights to follow some 3-weeks later was entered by Justice Craig Perkins (i.e. termination of plaintiff's right to access the children by conditional email per discretion as never been supplied) with various procedural deviations (including destruction of relevant documents) applied, with the provision added the plaintiff not be allowed to access the courts to appeal the judgment absent a $75,000.00 security bond posting made payable to the Newmarket, Ontario courthouse in advance **(Superior Court of Justice, Family Court Division, Newmarket, Ontario Case File No. 20401/05)**.

14. On July 05, 2005, and again on July 15, 2005, by way of ex-parte application, the plaintiff again petitioned the State of California for termination of jurisdiction and unilateral enforcement of orders citing California jurisdiction statutes in addition to the May 05, 2005 Canadian directive rescinding parental rights as grounds in support, which the court again denied stating, "That at all times the state has jurisdiction" but would not address the authority (statute or otherwise) backing the otherwise non-appealable by way of ex-parte

proceeding entitlement command.

15. On August 10, 2005, the plaintiff filed a petition for removal of the matter from the superior court to the United States District Court for the Southern District of California under 28 U.S.C. §§ 1441(b), 1443 (1) and (2) provisions (actions removal/civil action for persons denied or unable to enforce rights under state law...) citing the inability to enforce state jurisdiction mandates backed by Fourteenth Amendment provisions to the United States Constitution secondary to international immunity/respect of sovereignty circumstance, which is best demonstrated even today in the fact the State still lacks the ability to physically invade an Indian reservation located within miles of this same courthouse (absent federal intervention and/or consent) due to the lack of manpower ability to penetrate territorial circumference. **(United States District Court for the Southern District of California Case No.: 3:05-cv-01587-WQH-BLM)**

16. On October 19, 2005, in addition to bypassing established lawyer admittance procedural protocols (Susan Adam Metzler, is a Canadian lawyer **not** certified by the California State Bar yet is the responding party lead attorney recognized), the petition for removal from the state court to the federal arena was remanded back to the state forum with explanation of the matter defined citing foreign sovereignty dictation/separate nation as "domestic in nature" and not transferable as such, with the discretionary ruling not appealable under Title 28 U.S.C. § 1447(d) statutory dictates despite state law, Fourteenth Amendment allocations and sovereignty provisions necessitating the jurisdiction situation be recognized.

I.

FIRST CAUSE OF ACTION
(U.S. Constitution, First Amendment)
(Right to Petition Government for
Redress of Grievances)

17. The plaintiff alleges and re-alleges paragraphs 1 – 16, inclusive, with the same force and effect, and by this inference hereby incorporate them in this First Cause as though fully set forth herein.

18. That at all times relevant to this claim the defendant, United States of America, by way of authority bestowed to a United States district court under Title 28 U.S.C. § 1447 (d) via statute allocated discretionary ruling, disregarded the plaintiff's right to petition the government for redress of grievances founded upon the First Amendment to the Constitution of the United States through rights guaranteed to all people on July 04, 1776 through preceding declaration when, on October 19, 2005, the District Court for the Southern District of California refused to accept for removal a state court action brought under Title 28 U.S.C. §§ 1441 and 1443 incurring as a result of the plaintiff's inability to get state law mandates under California Family law § 3402 et al. recognized and enforced and essential to the termination of the all-inclusive state allocated order related jurisdiction utilized since the United States lacks authority to correct or rescind the July 2003 move-away party relocation under the given time constraint passages and current treaty among nations circumstance.

19. The plaintiff further alleges that as a direct and proximate result of the defendant's discretionary non-appealable ruling imparted under federal law the plaintiff has suffered and continues to suffer under seize of a unilateral enforcement of a wage garnishment/earnings–withholding provision, which is still in effect today, due to the inability to access rights to enforce state law by way of a petition to redress grievances despite the state court's non-appealable ongoing decision being inconsistent with state jurisdiction dictates enacted in accordance with instructions allocated under state law.

20. **WHEREFORE**, plaintiff prays for judgment and damages against the United States of America on this First Cause in the sum of two-hundred and seventy-five thousand dollars ($275,000.00) together with costs herein for the damage instilled as a result of the December 29, 2003 wage garnishment/earnings withholdings order invoked pursuant to California Family Law § 3653 et al. date of benefit eligibility provisions, and for any such further relief as this Court deems proper, equitable and just.

II.

SECOND CAUSE OF ACTION

(U.S. Constitution, Fifth Amendment)

(Right to Procedural Due Process of the Law)

21. The plaintiff re-alleges paragraphs 1 – 19, inclusive, of plaintiff's First Cause, and by this reference hereby incorporate them in this Second Cause as though fully set forth herein.

22. That at all times relevant to this claim the defendant, United States of America, by way of authority bestowed to a United States district court under Title 28 U.S.C. § 1447 (d) via statute allocated discretionary ruling, disregarded the plaintiff's right to access procedural due process of the law founded upon the Fifth Amendment to the Constitution of the United States through rights guaranteed to all people on July 04, 1776 through preceding declaration when, on October 19, 2005, the District Court for the Southern District of California refused to accept for removal a state court action brought under Title 28 U.S.C. §§ 1441 and 1443 due to the plaintiff's inability to get state law recognized and enforced which, upon party relocation, mandates the State of California terminate all rights and orders connected with subject matter jurisdiction pursuant to California Family Law § 3402 et al. provisions due to the United States inability to correct and/or rescind rights associated with the July 2003 move-away orders allocation given the time constraint passages invoked and current treaty among nations circumstance.

23. The plaintiff further alleges that as a direct and proximate result of the defendant's discretionary allocated non-appealable ruling pursuant to federal statutory provisions the plaintiff has suffered and continues to suffer under seize of a unilateral enforced wage garnishment/earnings withholdings mandate, which is still in effect today, due to the inability to access rights to enforce state law despite the state court's actions being inconsistent with state jurisdiction mandates enacted under state law.

24. **WHEREFORE**, plaintiff prays for judgment and damages against the United States of America on this Second Cause in the sum of two-hundred and seventy-five thousand dollars ($275,000.00) together with costs herein for the damage instilled as a result of the December 29, 2003 wage garnishment/ earnings withholdings order invoked pursuant to California Family Law § 3653 et al. date of benefit eligibility provisions, and for any such further relief as this Court deems proper, equitable and just.

III.

THIRD CAUSE OF ACTION

(U.S. Constitution, Fourteenth Amendment § 1)
(Right to Equal Protection of the Law)

25. The plaintiff alleges and re-alleges paragraphs 1 – 16, inclusive, of the plaintiff's First Cause, paragraphs 22 – 23 of the plaintiff's Second Cause, and by this reference hereby incorporate them in this Third Cause as though fully set forth herein.

26. That at all times relevant to this claim the defendant, United States of America, by way of authority bestowed to a United States district court under Title 28 U.S.C. § 1447 (d) via statute allocated discretionary ruling, disregarded the plaintiff's secured right to access equal protection of state law founded upon section 1 of the Fourteenth Amendment to the Constitution of the United States through rights guaranteed to all people on July 04, 1776 through preceding declaration when, on October 19, 2005, the District Court for the Southern District of California refused to accept for removal a state court action brought under Title 28 U.S.C. §§

1441 and 1443 incurring as a result of the plaintiff's consistent inability to get state law mandates under California Family law 3402 et al. recognized and enforced and essential to the termination of the all-inclusive state allocated order related jurisdiction invoked due to the lack of authority of the United States to correct and/or rescind the July 2003 move-away party relocation event given the time constraint passage instilled and current treaty among nations circumstance.

27. The plaintiff further alleges that as a direct and proximate result of the defendant's discretionary allocated non-appealable ruling pursuant to federal statutory provisions the plaintiff has suffered and continues to suffer under seize of a unilateral enforced wage garnishment/earnings withholdings mandate, which is still in effect today, due to the inability to obtain and /or access the right to equal protection of state law in both the state and federal forum despite the state court's actions being inconsistent with state jurisdiction mandates enacted pursuant to state law.

WHEREFORE, plaintiff prays for judgment and damages against the United States of America on this Third Cause, and for the foregoing Two Causes preceding this Cause as follows:

1. For compensation and relief in the sum of two-hundred and seventy-five thousand dollars ($275,000.00) together with costs herein, to be determined accordingly by trial, for damages instilled (past and ongoing) as a result of the December 29, 2003 wage garnishment/earnings withholdings order invoked pursuant to California

Family Law § 3653 et al. in accordance with date of benefit eligibility including date of ongoing provisions requirements when relief initially sought by way of motion/date of filing.

2. For a declaratory statement of party rights as allocated under Title 28 U.S.C. § 2201 (creation of remedy) statutory guidelines.

3. And for any such further direction and relief as this Court deems proper, equitable and just under the given circumstance.

Dated: Friday, December 07, 2007

Respectfully submitted,

s/
Duarte Manuel Cabral
Plaintiff in Propria Persona

P.O. Box 1062
Poway, California 92074
Telephone: (858) 945-6941
Facsimile: (619) 440-5598

VERIFICATION OF COMPLAINT

I, the undersigned, say:

I have written and read the foregoing complaint for compensatory damages and declaratory relief and know its contents.

I am the plaintiff named in this civil action/proceeding. The facts alleged in the above complaint are true and of my own knowledge except as to those matters which are stated on information and belief, and as to those matters alleged herein I believe them to be true.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: Friday, December 07, 2007

s/
Duarte Manuel Cabral
Plaintiff in Propria Persona

P.O. Box 1062
Poway, California 92074
Telephone: (858) 945-6941
Facsimile: (619) 440-5598

Appendix F

United States Court of Appeals for the Federal Circuit

2008-5044

DUARTE MANUEL CABRAL,

Plaintiff-Appellant,

v.

UNITED STATES,

Defendant-Appellee.

Appellant's Opening Brief with Appendix

On Appeal from the United States Court of Federal Claims in 08-CV-872, The Honorable Judge Christine O. C. Miller

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Plaintiff-Appellant

United States Court of Appeals for the Federal Circuit

2008-5044

DUARTE MANUEL CABRAL,

Plaintiff-Appellant,

v.

UNITED STATES,

Defendant-Appellee.

Appellant's Opening Brief

On Appeal from the United States Court of Federal Claims in 08-CV-872, The Honorable Judge Christine O. C. Miller

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The Plaintiff-Appellant, Duarte Manuel Cabral, by way of self- representation, respectfully appeals to the United States Court of Appeals for the Federal Circuit the final orders[s] and judgment entered by the United States Court of Federal Claims in the above-entitled case as follows:

STATEMENT OF RELATED CASES

There are no other appeals or proceedings active or pending from the same civil action in any court below; nor is there any civil action pending before any other appellate court concerning this issue here-in-now presented before this court of appeal.

STATEMENT OF JURISDICTION

A. Basis for Court of Appeals Jurisdiction.

The final order and entry of judgment disposing of the civil action was entered on January 15, 2008, by the Honorable Christine O.C. Miller, Judge, on behalf of the United States Court of Federal Claims. The subsequent order denying the plaintiff's motion for reconsideration and order to vacate judgment pursuant to R.C.F.C. 59(a), filed on January 28, 2008, was entered by the Court on February 06, 2008. **(Appellant Appendix, pp. 003 – 007, USCFC, pg. 002 docket entry[s] # 4, 5.)**

Accordingly, in the instance above a timely notice of appeal was filed with United States Court of Federal Claims on February 19, 2008. The jurisdiction of this Court is predicated upon rules 3 and 4 of the Federal Rules of Appellate Procedure and 28 U.S.C. § 1295 (3). **(USCFC, pg. 002, docket entry # 9.)**

B. Basis for U.S .Court of Federal Claims Jurisdiction.

The jurisdiction of the United States Court of Federal Claims is exclusively predicated upon 28 U.S.C. § 1491(a) (1) and (2) (claims against the United States generally) and § 1346 (a)(2) (United States as a defendant/cases based upon the constitution not sounding in tort); and by express consent conferred by and through the powers created, implied and founded upon (i.e. distinct and separate from rights protected **under** the Constitution) and with the establishment and implementation thereof (hence thereby a right of express implied contract) of the First and Fifth Amendments to the Constitution of the United States of America.

In addition, to other authorities mentioned 28 U.S.C. § 2201 (creation of a remedy) allocates to the lower Court, as invoked in the language under jurisdiction and authority, that in a case of actual controversy within its jurisdiction... as determined by administering authority (i.e. Title 28 U.S.C. § 1491(a)), **any court of the United States**, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration **shall** have the full force and effect of a final judgment or decree and shall be reviewable as such.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Whether the Court of Federal Claims acted correctly and within the scope of duty and guidelines prescribed under federal law and related provisions (i.e. dismissal of a claim sua sponte/acting before joint-party case presentation) when it terminated a claim brought against the United States for monetary detriment inflicted as a result of a district court determination (i.e. a discretionary ruling allocated under law but in direct conflict with the court's purpose and intention) given that the complaint is founded (as stated) exclusively **upon** First and Fifth Amendment rights to the United States Constitution as specifically allocated in the language of 28 U.S.C. §1491 (Tucker Act).

2. Whether the Court of Federal Claims all-inclusive application of 28 U.S.C. §2201 and 28 U.S.C. §1491 jurisdiction findings utilized to dismiss the complaint against the United States for a claim founded **upon** the U.S. Constitution for a detriment

not sounding in tort as verbatim allocated is correct in light of the language and authority prescribed under these statutes pursuant to federal law.

3. Whether the Court's all-inclusive determination of disregard for remedial remedy relief (monetary or other otherwise) partially founded upon secondary statute allocations cited by the plaintiff preceding the district court detriment event as is stated in the claim is correct; and, if so, whether the Court's 28 U.S.C. § 2201 creation of remedy findings preclude the Court of Federal Claims from acting in a case of controversy.

STATEMENT OF THE CASE

On August 10, 2005, after a 2-year series of unsuccessful attempts in a superior court to get the State of California to terminate jurisdiction following the permanent displacement of 2 minor children from the United States to the Province of Ontario, Canada the plaintiff filed a petition for removal of the civil action from the state forum to the United States District Court for the Southern District of California pursuant 28 U.S.C. §§ 1441(b), 1443(1) and (2) (i.e. actions removable/civil action for persons denied or unable to enforce rights under state law...) due to the state's lack of ability to supervise, modify, negotiate or enforce on foreign soil an array of various support-custody-reunification-visitation commands well-known at the time of the May 2003 issuance to be in direct conflict with sovereignty provisions allocated to the California tribunal under state law. **(Appellant Appendix, pp. 016 – 020, USCFC, pg. 002, docket entry # 1.)**

On October 19, 2005, following case assignment and judicial permission to circumvent steadfast lawyer admission procedures to accommodate Canadian lawyer recognition with knowledge of the Canadian court's then fully implemented jurisdiction over parties and irrelevant California controlling bylaws the petition for removal from the state court to the federal forum was remanded back to the San Diego superior court pursuant to 28 U.S.C. § 1447(d) statutory/ discretionary ruling provisional protocol (where it remains in force until addressed and reclassified) citing foreign sovereignty/separate nation boarder invasion as "domestic" in nature and therefore not transferable as such. **(Appellant Appendix, pp. 019, 020.)**

On December 13, 2007, the plaintiff filed a claim in the United States Court of Federal Claims against the United States of America to secure rights founded **upon** the constitution (separate from rights founded **under** the constitution as this instance demonstrates has yet to be clarified) for damages in the amount of $275,000.00 for life-time expenses incurred as a direct result of the 2005 district court discretionary ruling to decline jurisdiction, citing initial statutory provisions allocated to the plaintiff upon petition to the superior court to terminate jurisdiction in 2003 staying in full accordance with relief recognized under California law and supported by 28 U.S.C. §1652 provisions following acceptance of jurisdiction transfer protocol. **(Appellant Appendix, pp. 012 – 026, USCFC, docket entry # 1.)**

On January 15, 2008, before a response could be filed on behalf of the United States (other than counsel of record procedure advisement) the case

was dismissed by reciting background information altogether different or irrelevant or completely unrelated to the initiating document's three stated actions for rights founded upon the constitution clause[s] (with judgment attached), which the court did not otherwise acknowledge, with no real explanation given as to how or **why** the Court sought to review the complaint let alone dismiss the case before allowing the United States the allotted time to explain its position and/or file an appropriate response. **(Appellant Appendix, pp. 003 – 009, USCFC, docket entry[s] # 4, 5, 6.)**

On January 28, 2008, the plaintiff filed a motion for reconsideration and request to vacate judgment based on the January 16, 2008 document correction and Pacer docket information obtained from the website due to the delay in order and judgment receipt, which for some unknown reason was returned to the Court following initial release; and on February 06, 2008, in an apparent moment of judicial passion the motion with case inappropriate "do not file" instructions included was formally denied. **(Appellant Appendix, pp. 006a, 008, 009, 027 – 036, USCFC, docket entry[s] # 6, 7, 8.)**

On February 19, 2008, the plaintiff filed a timely notice of appeal to review the lower court's January 15, 2008 judgment and decision and handling of the subsequent motion to vacate the judgment entered on February 06, 2008, given that neither event warrants dismissal of an otherwise valid complaint. **(USCFC, docket entry # 9.)**

STATEMENT OF THE FACTS

In the December 13, 2007 request for declaratory relief and compensation the pleading

identifies the United States as the sole defendant responsible for the accumulation of injury expense. The plaintiff distinctly alleges three causes of action exclusively founded upon the United States Constitutional doctrine and cites the appropriate jurisdiction allocated under 28 U.S.C. § 1491 with related authorities recited, and explains the specifics behind the court access to utilized to address the claim. **(Appellant Appendix, pp. 014, 015, 019–024, USCFC, docket entry # 1.)**

Specific to this claim, the document states that damages sustained (for the purposes of compensation) are those incurred as a direct result of the October 19, 2005 district court endorsed discretionary ruling authorized by legislation, and foretells of preceding statutory dictates laid (i.e. 28 U.S.C. § 1447(d)) which prevent the situation from being redressed accordingly (because of the lack of forum finality) due to the nature behind the original order backed through well-meaning legislation by normally addressed by means of appeal. Included in this claim, is the California Family Code § 3653 et al. that allocates monetary compensation, which would be in force today had the case been properly accepted for transfer (under 28 U.S.C. §§§ 1441, 1443, 1652) in the federal forum in 2005. **(Appellant Appendix, pp. 019–020, USCFC, docket entry # 1.)**

In the January 15, 2008 Order issued "sua sponte" by the Honorable Judge Christine O.C. Miller for the United States Court of Federal Claims, which lacks explanation as to how the document even found its way to the bench without defendant acknowledgement or request to suggest such a judicial advance, the decree recites several statutes and an askew history somewhat different from the

initial mention or altogether irrelevant for the here-in-now purposes to seemingly justify the disposal of an executable complaint. **(Appellant Appendix, pp 003 – 006, 009, USCFC, docket entry # 4.)**

Following this instantaneous spontaneity, the court then oddly enough reverses its stance and confers it has authority to "render judgment upon any claim against the United States founded either upon the constitution, or an Act of Congress... for liquidated or nonliquidated damages in cases not sounding in tort...." **(Appellant Appendix, pg. 004, USCFC, docket entry # 4.)**

The order goes on to acknowledge that jurisdiction extends to claims for money based on statutes or regulations as explained in the complaint, but then ignores the fact that statutory relief is guaranteed to the plaintiff through the initial petition applied at the state level following party displacement in accordance with jurisdiction/sovereignty severance provisions (as is stated), which is allocated by California State law and supported by 28 U.S.C § 1652 upon acceptance of transfer to cure the want of jurisdiction defect demand. **(Appellant Appendix, pp. 003 – 006 , 019 – 024, USCFC, docket entry[s] # 4, 1.)**

Lastly, the Court attempts to portray 28 U.S.C. § 2201 (creation of a remedy) as a formulated basis for jurisdiction, which it then seemingly reverses on its own accord, and recites the federal claims forum (unlike "other" federal courts) (citing *Gonzales & Gonzales Bonds and Ins. Agency, Inc. v. Department of Homeland Sec.*, 490 F.3d940, 944-46 (Fed. Cir. 2007)) lacks the means to create a "remedy," declaratory or otherwise, by applying an

unrelated circumstance which appears to have no bearing on this case whatsoever as this situation does not request or involve a transfer of jurisdiction; nor does the pleading anywhere request a cancellation of a debt. **(Appellant Appendix, page 006, USCFC, docket entry # 4.)**

SUMMARY OF THE ARGUMENT

This appeal addresses three basic issues which give rise to what the court of federal claims jurisdiction means in relation to claims founded upon the constitution with compensation allocated through secondary statute for detriments not sounding in tort. Appellant contends that the court of federal claims wrongfully dismissed an executable complaint "sua sponte" founded upon proper authority and solid jurisdiction, and did so without authorization (or defendant advance) thereby breaking with tradition, which in turn prevented the United States from redressing a situation with the appropriate action and/or filing of an explanatory response.

Appellant asserts that 28 U.S.C. § 1491 grants the necessary permission needed to access the lower court in this situation, and that he is entitled to compensation and relief through secondary statutes allocated (California Family Code § 3653 et al., 28 U.S.C. §1652) due to the 2005 district court discretionary ruling to decline acceptance of jurisdiction authorized under federal law.

Lastly, appellant argues that 28 U.S.C. § 2201 allocates to the court of federal claims the authority to render declaratory relief when no other avenue for remedy is available, which includes directions to the

district court in the first instance since the State of California's inherent power (absent legislation or agreement to address the command) does not extend past a United States territorial boarders absent some violation (such as kidnapping) than classified as an action within the realm of The Hague Convention Act.

ARGUMENT

I.

DISMISSAL OF ACTION "SUA SPONTE" NOT ALLOCATED ABSENT APPLICATION OR FILING OF A RESPONSE

A. Standard of Review.

"An appellate federal court must satisfy itself not only of its own jurisdiction, but also of that of the lower courts [sic] in a cause under review." *Mitchell v. Maurer*, 293 U.S. 237, 244 (1934). Thus, even if the issue is not properly raised, this court sua sponte may consider all bases for the trial court's jurisdiction," *Consolidation Coal Co. v. United States*, 351 F.3d 1374, 1378 (Fed. Cir. 2003), or lack thereof.

B. Utilization of "Sua Sponte" Verses Addressing the Complaint.

Rather than allowing the United States to investigate the claim's supporting merits and allow appropriate time to respond, the Court mistakenly relied on a 1988 administrative law decision (*Artic Corner, Inc v. United States*, 845 F.2d 999, 1000 (Fed. Cir. 1988)) based on a breech of contract between a vender and the Armed Services Board of Contract Appeals dismissed by way of summary judgment following joint-party participation, which stemmed from a partial performance default

circumstance not in actual controversy due to the terms of government contract stated (a known prerequisite to access the court of federal claims) that prevented the case from being reversed on appeal.

In addition, without addressing jurisdiction provisions founded under 28 U.S.C. §1491, judicial application of procedural deviations or the fundamental constitution rights as defined in the initiating document, the Court utilized a 2001 attorney misconduct case (*Knoll v.* Finnerty, 242 F.3d 1359, 1362 (Fed. Cir. 2001)) initially litigated in the lower court with appropriate consideration administered (devoid of how the decision was decided on review) to inadvertently dismiss a never before addressed case presentation instead allowing the United States time to inquire into the unauthorized state endorsed sovereignty infiltration, which (at the very least) would have clarified constitutional rights founded by doctrine in addition to identifying/formalizing the legislations intent.

Needless to say, procedurally speaking, there appears to be no supporting case law (published or otherwise) or related statute condoning the lower court's practice to legislate this matter as it sees fit (without any supporting endorsement) to dismiss an action that undoubtedly falls under a claim founded upon rights backed by statute and guaranteed under the constitution (28 U.S.C. §§§§ 1491, 1441, 1443, 1652) which has prevented the United States from supplying a much needed response. Thus, even if this Court disagrees with the foundation standing, at the very least, this case must be remanded back to the lower court with instructions allocated given the unprecedented handling and circumstance.

II.

RIGHTS FOUNDED UPON THE CONSTITUTION UNDER 28 U.S.C. § 1491, § 2201 HAVE JURISDICTION STANDING IN THE COURT BELOW

A. Standard of Review.

We review judgments of the Court of Federal Claims as to its subject matter jurisdiction for error of law. *James M. Ellett Constr. Co. v. United States*, 93 F.3d 1537, 1541 (Fed Cir. 1996). A claim may be brought in the Court of Federal Claims under the Tucker Act, codified in relevant part at 28 U.S.C. § 1491 (1994), by which Congress has explicitly consented to suit and waived sovereign immunity, but only when a substantial right to money damages is otherwise provided. *United States v. Mitchell*, 463 U.S. 206, 216-17, 103 S.Ct. 2961, 2967-68 (1983); *United States v. King*, 395 U.S. 1, 2-3, 89 S.Ct. 1501, 1501-02 (1969). These suits include those "founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon express or implied contract with the United States, or for liquidated or unliquidated damages not sounding in tort." 28 U.S.C. § 1491(a) (1).

B. Right to Raise Constitution Issues Relevant to Statute.

As stipulated under 28 U.S.C. § 1491(a) (1) (2000) (Tucker Act) the plaintiff's complaint specifically recites that U.S. Court of the Federal Claims is authorized to "render judgment upon any claim against the United States either founded upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any

express implied contract with the United States, or for liquidated or nonliquidated damages not sounding in tort."

Notably, the Tucker Act jurisdiction, which requires not only a claim against the United States, but also requires, based on principles of "sovereign immunity," that there be a separate money-mandating statute money-making statute the violation of which supports a claim for damages against the United States. *United States v. Testan*, 424 U.S. 392 (1976); *Eastport S.S. Corp. v. United States*, 372 F.2d 1002 (Ct. Cl. 1967).

Accordingly, the claims stated jurisdiction requirement for monetary compensation is satisfied with secondary statute application supplied in conjunction with the removal of the matter from the state level to the federal forum as allocated under 28 U.S.C. §§ 1441 (b), 1443 (1) and (2) (actions removal/civil action for persons denied or unable to enforce rights under state law...), since the relief founded comes under California Family Code § 3653 et al. dictates supported by 28 U.S.C. §1652 ruling mandates, which would have been invoked had the district court not utilized it's non-appealable statutory discretion (28 U.S.C. § 1447) and declined to accept the transfer to cure want of jurisdiction mandates.

Hence, because of the lack of response by the United States in this case in combination with the quick haste utilized to dispose of the complaint instead of addressing the claim's true contents, it is unknown whether the court of federal claims, in this instance, had any working knowledge of this statute's creditability or the underlying authority and dynamics present and/or comprehension as to

how the monetary statutory demand was being satisfied.

Consequently, secondary to procedure error firstly mentioned, it is respectfully requested that this case be remanded back to the lower court in accordance with appellate jurisdiction provisions with instructions as this Court deems proper in the given circumstance.

III.

28 U.S. C. § 2201 JURISDICTION NOT BARRED IN ABSENCE OF LEGISLATION INTENT

A. Standard of Review.

In order for a claim to be brought under either the Tucker Act or the Little Tucker Act, the claim must be for monetary relief, if cannot be for equitable relief, except in very limited circumstances not at issue here. *See Doe v. United States*, 372 F.3d 1308, 1312 (Fed. Cir. 2004) (citing *Lee v. Thornton*, 420 U.S. 139, 140 (1975) (The Tucker Act empowers district courts to award damages but not to grant injunctive or declaratory relief.”))

In determining whether a claim is for monetary relief, a court must look beyond the form of the pleadings to the substance of the claim. *See Brazos Elec. Power Coop v. United States*, 144 F.3d 784, 787 (Fed. Cir. 1998) (“Court of Federal Claims jurisdiction cannot be circumvented by such artful pleading and, accordingly, we customary look too the substance of the pleadings rather than their form.”)

B. Creation of a Remedy by Way of Statute.

In the initiation document’s statement of jurisdiction the plaintiff cites 28 U.S.C. § 2201 (creation of a remedy) as one way (amongst others)

in which the court of federal claims has means to address/redress a situation founded upon the constitution's fundamental rights not otherwise acknowledged in the federal forum (as observed by the 2005 decision to not accept transfer when warranted by circumstance) when no other remedial remedy under legislation to extend these rights exists.

Ironically, the court initially acknowledges this statute's limited authority and understanding of related requirements involved. But then it seemingly reverses its position and dismisses the opportunity to address a unstable situation by overlooking the statute's inherent power and intention by applying a Fourth Amendment ruling transferred from a district court in 2006 (G*onzalez & Gonzalez Bonds and Insurance Agency, Inc. v. Dept. of Homeland Sec.*, 490 F.3d 940, 944-46 (Fed. Cir. 2007) that involved a case of surety bond postings confiscated by the Department of Homeland Security when deciphering bail in immigration surroundings, which would later be classified by DHS as a "cancellation of a debt" thus forfeiting the agency's chances for reimbursement of previously posted funds let alone a reversal in the Federal Circuit by way of appeal.

Likewise, the court also cited (*Rolls Royce v. United States*, 364 F.2d 415, 420) as a limited workable solution to create a remedy (as in since this matter has been never been addressed it might consider redirecting the preceding court to reclassify and accept the 2005 initially disregarded transfer to address the matter of jurisdiction, as opposed to United States writing out a check) given that the complaint's monetary/jurisdiction requirements were well-plead in advance, but instead the court once

again reversed itself by drafting a unrelated understanding of events, completely void of the true state of affairs brought for examination in light of the damage sustained.

Accordingly, because the claim is firmly founded upon the Constitution with demand for compensation with statutory monetary relief backing involved, and because ignoring the merits does not in itself correct or redress the sovereignty issues clearly overlooked in the 2005 federal court at first glance, the plaintiff respectfully requests this court of appeals take the matter under sincere consideration and remand the complaint back to the court of federal claims with direction as to this Court appropriate given the true circumstance.

CONCLUSION

STATEMENT OF RELIEF SOUGHT

Because the December 13, 2007 complaint is founded upon 28 U.S.C. § 1491 statutory criteria and meets the standard of review for relief prescribed for a civil action falling under a claim against the United States founded upon the Constitution for monetary compensation for damages not sounding in tort, the plaintiff respectfully requests this case be remanded back to the United States Court of Federal Claims pursuant appellate procedure and related statutory guidelines with instruction as this court deems proper in accordance with relief allocated under federal law.

For the aforementioned reasons mentioned, the plaintiff-appellant respectfully requests the judgment be reversed and case remanded to the lower court for trial and review.

Dated: April 21, 2008

Respectfully submitted,

s/
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Appendix G

In the United States Court of Appeals for the Federal Circuit

2008-5044

Duarte Manuel Cabral,
Plaintiff-Appellant,

v.

United States,
Defendant-Appellee.

APPELLANT'S REPLY BRIEF

On Appeal from the United States Court of Federal Claims in 08-CV-872, The Honorable Judge Christine O. C. Miller

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Plaintiff-Appellant

In the United States Court of Appeals
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2008-5044

Duarte Manuel Cabral,
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v.

United States,
Defendant-Appellee.

APPELLANT'S REPLY BRIEF

On Appeal from the United States Court of
Federal Claims in 08-CV-872,
The Honorable Judge Christine O. C. Miller

In the United States first-and-only rebuttal ever supplied, a defense is built around the lower court's sua sponte pleading removal following an unrecognized judicial record rendition that is presumed to be at the heart of the government's lack of filing of a counter response, which, while not fact based, does require equal consideration since acceptance of this style implies the October 2005 district court ruling is tort based in foundation (verses non-tori confined···meaning rights thought to be founded upon the constitution as plead in the originating document), which (if accepted by this Court) then dictates how and, more importantly, what issues are (or will be) allowed to be addressed by way of this appeal.

STATEMENT WITHIN THE DIRECTION OF REPONSE

Following this presentation and giving due deliberation (hypothetically speaking) to the United States adoption of the Court of Federal Claims self-imposed rendition of 2005 events with all presumptions deemed to be politically sound, the focus of this appeal then shifts to whether this Court considers the October 19, 2005 district court discretionary ruling, which declined transfer of petition acceptance (despite 28 U.S.C. § 1447(d) permissiveness) erected upon a domestic-based action turned federal cause (i.e. forerunner application initiated due to a state pursuit to enforce U.S./state determined law in a foreign country in the absent of sovereignty agreement, treaty or enforceable jurisdiction which counsel acknowledged in the United States response) since this is the underlying basis supplying 28 U.S.C. §§ 1441, 1443 relief (i.e. actions removable/civil action for persons denied or unable to enforce rights under state law), and the exclusive reason the December 2007 action naming the United States as a defendant was not considered to be a tort. **(Respondent Brief, p. 4, Appellant Opening Brief, pp. 4 – 9, Appellant Appendix, pp. 003 – 006.)**

Staying within this instructional guideline, and given that the United States lacks qualified authority to enforce state or federal laws on foreign soil or encompassing terrain which fall outside of the United States territorial command (aside from the United Nations being invoked), and because there is no mention in the appellant brief, initiating claim, or motion for reconsideration to incite inference to matters of custody, visitation, support order

referencing; nor utilization of the words violation, deprivation or infringement when discussing rights founded upon the constitution within the context of 28 U.S.C § 1491(a)(1) (Tucker Act) jurisdiction as adopted in the United States reply, no defense to these remarks is supplied due the immaterial relevance.

SUMMARY OF ARGUMENT

Setting aside the United States adopted history of discernments (should this Court address the 28 U.S.C § 1491(a)(1) (Tucker Act) criteria as the claim identifies) the plaintiff contends he is afforded compensation under secondary money-mandating statutory relief allocated under California Family Code § 3653 et al. in accordance with 28 U.S.C. § 1652 provisions implied (neither of which require elaboration since the Court of Federal Claims did not acknowledge the statute[s] inherent powers on the first go around), which not only provides the for monetary compensation from the date of initial application (i.e. 2003), but also supplies retroactive relief from any peripheral originating state ordered misappropriations pending given the out of United States territorial jurisdiction premise has not yet been rectified.

In addition, it is also argued, holding in accordance with the foundation afforded under 28 U.S.C. § 1491(a)(1) (Tucker Act), that all pleading requirements necessary to access the United States Court of Federal Claims forum are met when a party states a claim that is founded upon the constitution... if a [any] money-mandating statute accompanies the generated demand (since no mention of disqualification with reference to the

secondary money-mandating statute cited under California Family Code § 3653 et al. has been addressed it's unclear as to whether this point has been taken into account), which is unarguably supported by the three causes of action stated in the claim being: 1) the right to petition the government for redress of grievances, 2) the right to due process of the law and 3) the right to equal protection of the law; all of which fall in alignment with the called upon exclusive jurisdiction statutory language described.

ARGUMENT

I. "Sua Sponte" Separated from Joint-Party Participation Review.

The defendant recites a large variety of case circumstances all relevant to joint-party participation court reviews, but fails to submit a single example that resembles the Court of Federal Claims' independent circulation/case disposition handling following an unassigned screening process now classified as sua sponte to sidestep explanation of the self-imposed judicial assignment being appraised, which is a distinct and separate issue from that of any material wanting following record revision irregardless of the document's perceived content.

For example, taking into account two case recitals, Bayship Mgmt., Inc. v United States, 43 Fed. Cl. 535, 536 (1999); see also Fisher v. United States, 402 F.3d 1167, 1173 (Fed. Cir. 2005) (en banc), both utilized to endorse the judicial prescreening and pleading disposition review, where in this instance the defendant equates by case paradigm, "When a complaint is filed alleging a

paradigm, "When a complaint is filed alleging a Tucker claim [...] the trial court at the onset shall determine, either in response to a motion by the Government or sua sponte (the court is at the onset shall determine, either in response to a motion by the Government or sua sponte (the court is always responsible for its own jurisdiction), whether the Constitution provision, statute, or regulation is one that is money-mandating," while leaving out mention of case related joint-party participation before all documents are circulated to an initiating judge, which circumnavigates the independent activity not condoned and is presumed to be due to a lack of statute, regulation or federal authority to uphold the screening process. (**Respondent Brief, p. 7.**)

Hence, setting aside all predictable defenses common to any defendant caught without an explanation to endorse an unauthorized act, the United States has not supplied any tangible argument to support the sua sponte exposed pre-screening of pleadings circulation process before a response can be summoned by a defendant thereby sidestepping the true issue behind the judicial procedure which, according to legislation, is not authorized.

II. ***Nature of Case Exclusive to Federal Claims Jurisdiction.***

While the language and knowledge of 28 U.S.C. § 1491(a)(1) is unanimously concurred, the ideas behind this statute's inherent power becomes greatly distorted when it does not benefit the challenge of supplying a concrete, based on the facts, supporting defense, which is believed to be at the

center of the Court of Federal Claims document rendition given the facts procedurally stated clearly do not favor a plausible counter rebuttal attack. The plaintiff's complaint filed on December 13, 2007 in the United States Court of Federal Claims distinctly recites three specific rights founded (and worded exactly as such) upon the United States Constitution, an originating document founding the courts authority from the onset, which is soundly backed by the October 19, 2005 district court discretionary ruling allowed (providing the district court's decision to decline acceptance of a state issue turned federal cause is correctly stated) in accordance with 28 U.S.C. § 1447(d) protocol. **(Appellant's Appendix, pp. 012 – 026.)**

As with the plaintiff's claim, counsel for the United States too admits the Tucker Act is a jurisdictional statute in nature as Title 28 U.S.C. indicates, but then instantly shifts gear to convey an assumption that the district court "violated the plaintiff's First and Fifth Amendment rights" (which is separate from suing the United States for rights founded upon the Constitution paying recognition to federal statute depicting a state's jurisdiction not extending beyond a United States territorial boarder absent mitigating circumstance), thereby implying as fact (or additional word play as the case may be) that the federal court in question willfully committed a tort by not acknowledging (or respecting) United States sovereignty laws absent authorized invasion or a time of war. **(Respondent Brief, pp. 8, 9, Appellant's Opening Brief, pp. 7 – 9, Appellant's Appendix, pp. 009 – 013.)**

Moreover, which is even more discerning

given it's the United States government placing this defense, counsel communicates the citation of 28 U.S.C. § 1346(a)(2) as not being applicable in federal claims court venue and jurisdiction, which is cited in the initial pleading for the sole purpose of identifying the United States as the defendant named, reciting the statute doesn't apply to the United States in the Court of Federal Claims because, to counsel's understanding, the United States can only be a defendant named if an action is taken before a district court. (It would appear there is some confusion here with regards to the differences between the Little Tucker Act (i.e. claims involving funds less than $10,000 naming the United States as the defendant) and the Tucker Act guided under 28 U.S.C. § 1491(a)(1) principle protocol. (Referring to United States reference of Christopher Vill., L.P. v. United States, 360 F.3d 1319 (Fed.Cir.2004) (explaining § 1346 as exclusively impacting district courts.) **(Respondent's Brief, pp. 9, 10.)**

In any case, unless a decision is made based on the United States self-assigned determination to support the screening process which, as this case illustrates, discriminates and disqualifies statutory provisions for claims founded upon the constitution then decided in direct conflict with 28 U.S.C. § 1491(a)(1) (Tucker Act) thereby abrogating the very foundation creating the lower court[s] authority to act, this Court of Appeal, by sheer default, makes a ruling against the district court's October 19, 2005 discretionary determination due to the laws governing the United States territory as understood through the decline to accept for transfer a petition to terminate perceived jurisdiction following the

State of California's foreign invasion into Canada absent sovereignty treaty or prearranged understanding (which the state does not possess under California State law), the plaintiff's claim must be rightfully acknowledged, reinstated and addressed as such in the United States Court of Federal Claims per statute protocol.

III. 28 U.S.C. § 2201 Case in Actual Controversy; Money—Mandating Statute Application Exceeds Test Requirements.

Contrary to the United States understanding of The Declaratory Act as recited in the reply, 28 U.S.C. § 2201 (creation of a remedy) was named by the plaintiff not as a jurisdiction entry requirement (another United States rendition portrayed as fact) but as one avenue (secondary to California Family Law § 3653 et al. money-mandating statute backed by 28 U.S.C. § 1652) in which the court of federal claims could redress the overstepping of sovereignty line provisions endorsed by the October 19, 2005 district court discretionary ruling predicament (providing the federal court was correct in the first instance as described) given the 28 U.S.C. § 1447(d) statutory endorsed support then placing this case as one in and of actual controversy within its jurisdiction since the claim originates around rights founded upon the Constitution due to the secondary money-mandating source backed by 28 U.S.C. § 1652 (i.e. state laws as rules of underlying decision). **(Respondent's Brief, pp. 10, 11.)**

However, because of the Court of Federal Claims failure to acknowledge a party's rights founded upon the Constitution, which the United States explanation and defense exemplifies, it is

difficult, at best, to judge whether this statute's inherent power in relation to the creation of a remedy applies since, until this case takes direction (i.e. is the October 19, 2005 district court determination tort related or did that court really have authority to decline petition to correct a jurisdiction issue that falls under federal guidelines) nothing about this pertains to the outcome provided.

CONCLUSION

For the reasons stated above, and because the claim brought by the plaintiff to the United States Court of Federal Claims is solely based on rights founded upon the United States Constitution and is not believed to be in violation of the founding document due to statutory discretion allocated to the district court under 28 U.S.C. 1447(d), it is respectfully requested that judgment be reversed and this case be remanded back to the lower court for trial based on the language named in the complaint in accordance with federal law.

Dated: January 05, 2009

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